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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,373	01/23/2004	Shinobu Koizumi	500.31164CV6	4465
24956 7590 05/21/2007 MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C. 1800 DIAGONAL ROAD SUITE 370 ALEXANDRIA, VA 22314			EXAMINER YAARY, MICHAEL D	
			ART UNIT 2193	PAPER NUMBER
			MAIL DATE 05/21/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/762,373

Applicant(s)

KOIZUMI ET AL.

Examiner

Michael Yaary

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2193

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/23/2004 & 03/02/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. Claims 2-10 are pending in the application.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 2-4 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 6,343,373 (hereafter '373 patent). Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims contain the same scope and limitations written in a slightly different manner.

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4. As to claim 2 of the instant application, the claim contains all the limitations found in claim 3 of the '373 patent. Both the instant claim 2 and claim 3 of the '373 patent disclose the limitations of: generating a machine language program based machine instruction generating rules; said machine language program being directly executable in target computer (second computer) and having a binary format; and executing said machine language program stored on a main memory of target computer.

5. As to claim 3 of the instant application, the claim discloses the same conflicting limitations addressed above in the instant claim 2. In addition the instant claim 2 discloses loading said machine language program on a memory of said second computer. Claim 3 of the '373 patent discloses this as the machine language program is generated "on a main memory of said target machine," thus being loaded on a memory of said second computer.

6. As to claim 4 of the instant application, the claim discloses the same conflicting limitations addressed above in the instant claim 2.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 2-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Chan et al. (hereafter Chan)(US Pat. 5,280,613).

Chan was cited in IDS filed in on 01/23/2004.

9. **As to claim 2**, Chan discloses a method for proceeding an abstract object program prepared in a first computer by a second computer (program 202 in producer site, or computer 206 and install site, or second computer 216), said first computer having a first instruction set which is different from a second instruction set of said second computer (Abstract, lines 4-6 disclose heterogeneous target computer platforms, thus different instructions sets), said method comprising the steps of:

Receiving said abstract object program (abstract, lines 1-17);

Generating a machine language program of said second instruction set from said abstract object program based on machine instructions generating rules of said second computer (column 58, lines 35-40 and column 61, lines 9-13 and machine instructions 1356 of figure 13.), said generated machine language program being directly executable in said second computer and having a binary format (Object file 1362 in figure 13; column 3, line 65-column 4, line 4; and column 61, lines 9-13 disclose code being converted into executable code.); and

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Executing said machine language program by second computer on loading said machine language program to a memory of said second computer (column 4, lines 28-37 and column 61, lines 9-13).

10. **As to claim 3**, the claim is rejected for the same reasons as claim 2 above, and Chan also discloses loading said machine language program on a memory of said second computer column 13, lines 15-65 and column 14, lines 37-68).

11. **As to claim 4**, the claim is rejected for the same reasons as claim 1 above.

12. **As to claims 5, 7, and 9**, Chan discloses plural of instructions of said machine language program are generated from one instruction of said abstract object program (column 6, lines 32-53 and column 9, lines 7-13).

13. **As to claims 6, 8, and 10**, Chan discloses one of instructions of said machine language program is generated from plural of instructions of said abstract object program (column 6, lines 32-53 and column 9, lines 7-13).

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Yaary whose telephone number is (571) 270-1249. The examiner can normally be reached on Monday-Friday, 8:00 a.m - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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